

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LOCAL 513, INTERNATIONAL UNION OF)
OPERATING ENGINEERS, AFL-CIO, et al.,)
)
Plaintiffs,)
)
vs.)
)
RALPH JONES CONTRACTORS, INC.,)
)
Defendants.)

Case No. 4:08-CV-1451 (CEJ)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs' motion for final default judgment.

On September 23, 2008, plaintiffs filed this action to recover delinquent contributions pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1132 (ERISA), and the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. § 185(a). Defendant failed to file an answer or other responsive pleading and, on November 10, 2008, the Clerk entered default against defendant.

Defendant Ralph Jones Contractors, Inc., is a signatory to a collective bargaining agreement in effect from May 1, 2004 through April 30, 2009. Under the terms of the agreement, defendant was required to submit monthly reports and make contributions to the employee benefit plans. At the time they filed the complaint, plaintiffs had received from defendant contribution reports -- but no payments -- for the months of August 2006, September 2006, and March 2007. On February 4, 2009, the Court granted plaintiffs' motion for default judgment with respect to these three reports, finding that plaintiffs had established that they were entitled to delinquent contributions for these months in the amount of \$244,757.27; liquidated damages in

the amount of \$48,951.46; and prejudgment interest in the amount of \$6,997.45.¹ In the present motion, plaintiffs contend that they miscalculated the amount of interest due and state that they are actually entitled to \$53,458.05. The Court has reviewed this claim and will grant plaintiffs' request for the amended interest calculation for contributions due in August 2006, September 2006, and March 2007.

The Court directed defendant to submit its records for an audit. Peggy Schroeder, field auditor and vacation coordinator for the funds, testifies by affidavit that she completed the audit. According to Ms. Schroeder, defendant is liable for contributions, liquidated damages, and interest for the months of January and February 2007, and April through October 2007. She has supplied a document setting forth, for each month, the contributions due to the separate funds² and the liquidated damages and interest due on the unpaid contributions. Included in Ms. Schroeder's calculations are amounts owing to the Site Advancement Foundation, which is not a party to the case; these amounts will be excluded.

Plaintiffs' evidence establishes that, for the months of January and February 2007, and April through October 2007, defendant Ralph Jones Contractors, Inc., is liable to the union and the funds for \$204,782.69 in unpaid contributions and supplemental dues, and \$40,956.54 in liquidated damages, for a total of \$245,739.23. The interest due on the unpaid contributions totals \$31,928.39. Ms. Schroeder indicates that there is a balance of \$5,073.73 held in the field audit account. This balance will be subtracted from the amount owed.

¹No judgment was entered at this time.

²Included in Ms. Schroeder's calculations are amounts due for supplemental dues. The collective bargaining agreement provides that the Union may "implement a supplemental dues plan in connection with the vacation plan," § 18.04 [Doc. #1-3 at 38], and these amounts will be included in the judgment.

Plaintiffs also submit the affidavit of attorney James R. Kimmey. Mr. Kimmey attests that his firm billed plaintiffs for attorney services at the hourly rates of \$150.00 to \$200.00. Attached to Mr. Kimmey's affidavit is a billing record for work performed in connection with this case. The Court has reviewed the record and finds that the hours expended (16.70) and the hourly rate are reasonable. Plaintiffs have established that they have incurred attorney's fees in the amount of \$3,250.00 and costs in the amount of \$350.00, for a total of \$3,600.00.

In summary, plaintiffs are entitled to final default judgment in the following amounts:

	<u>8/2006; 9/2006; 3/2007</u>	<u>1/2007; 2/2007; 4 to 10-/2007</u>	TOTALS:
Contributions:	244,757.27	204,782.69	449,539.96
Liq. dams.:	48,951.45	40,956.54	89,907.99
Interest:	53,458.05	31,928.39	<u>85,386.44</u>
SUBTOTAL:			624,834.39
Balance held:			<u>(5,073.73)</u>
TOTAL:			619,760.66

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' motion for final default judgment [Doc. #16] is granted.


 CAROL E. JACKSON
 UNITED STATES DISTRICT JUDGE

Dated this 10th day of February, 2010.